HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No.349 of 2003 (SS)

Kundan lal Shah vs. Addl. Director of Education & others

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision October 23, 2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petitioner No.349 of 2003 (SS)

Kundan Lal Shah S/o Sri Ratan Singh
Senior Clerk, Govt. Inter College, Uttarkashi..…… Petitioner

Versus

1. Additional Director of Education, Uttaranchal
2. District Inspector of Schools, Uttarkashi
3. Principal, Govt. Inter college, Uttarkashi
4. Sri Jag Mohan Singh Chauhan, Sr. Clerk, Govt. Inter College, Uttarkashi
5. Sri Vijai Pal Singh Sajwan, M.L.A. Gangori Legislative Constituency, Uttarkashi

…..……. Respondents

Sri Manoj Tiwari, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: October 23, 2003

Hon'ble Rajesh Tandon, J.

The present writ petition has been filed by the petitioner for a writ or direction in the nature of certiorari quashing the transfer order dated 20.6.2003 passed by the respondent no.1.

Briefly stated the facts giving rise to the present writ petition are that the petitioner is posted Senior Clerk in Government Inter College Uttarkashi and was posted there on 28.5.1995. The petitioner was elected as General Secretary of Education Ministerial Officers Association, Uttarkashi on 24.8.2002 for a period of two years as per Bye-laws of the Association. It has been alleged that the Government issued order-dated 28.7.1984 providing that the office bearers of recognized Associations shall not be transferred within two years of

the dated of their election. The petitioner has further alleged that under the influence of Sri Viyai Pal Singh Sajwan, M.L.A. the Government accommodation allotted to the Principal of Govt. Inter College, Uttarkashi has been given to the wife of Sri Vijai Pal Singh Sajwan, who is serving as Assistant Teacher in Government Girls Inter College, Uttarkashi and as the petitioner raised objections due to which Sri Vijai Pal Singh Sajwan felt offended and he pressurised respondent no.1 for the transfer of the petitioner from Uttarkashi to Gewala. The petitioner has stated that he has been disturbed only due to the annoyance which was caused to Sri Vijai Pal Singh Sajwan, M.L.A. as the petitioner has objected in the matter of allotment of Government accommodation to his wife.

The petitioner has further alleged that his eldest son is studying in M.A. Final in Govt. P.G. College Uttarkashi. His two daughters are studying in Class XI and Class XII in G.G. I.C. Uttarkashi and his youngest son is studying in class VIII. His wife is ill and is suffering from high blood pressure and is being treated at Uttarkashi and as such the transfer of the petitioner at such stage would cause great prejudice to him.

It has also been alleged by the petitioner that there is neither any public interest nor any administrative exigency involved in transferring the petitioner.

In view of his personal hardships, the petitioner made one representation dated 23.6.2003 to the Additional Director of Education. The said representation was forwarded along with the recommednation by the Principal G.I.C. Uttarkashi as well as District Inspector of Schools, Uttarkashi but no order has been passed by respondent no.1 on his representation.

Normally in the transfer matter no interference is required in view of the judgment of the Apex Court in the case *Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532* as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Consequently no interference can be made under Article 226 of the Constitution of India. The employee concerned has been permitted to approach to the higher authorities of the Department and the same may be decided by way of representation filed by the petitioner.

However, the learned counsel for the petitioner has argued that there is neither any administrative exigency nor any public interest involved in the transfer order of the petitioner. It was stated that transfer order has been passed due to allotment of Government accommodation to the wife of M.L.A. i.e. on political reasons.

The learned counsel for the petitioner has placed reliance on the following case laws showing that the transfer order passed on political reasons cannot be allowed to stand.

(1) (1997) 2 UPLBEC 925, Smt. Gyatri Devi vs. State of U.P.

(2) (1995), UPLBEC 31, Saheb Lal vs. Assistant registrar (Admn.)

(3) Nathi Lal vs. Secretary Ministry of Agriculture (1995) 2 UPLBEC 1115.

(4) (1994) 1, UPLBEC 189, Pradeep Kumar Agrawal vs. Director Local Bodies.

(5) (2000) 1 UPLBEC 574, Salek hand vs. State of U.P.

Further in the case of Smt. Gyatri Devi vs. State of U.P. and others, (1997) 2 UPLBEC 925, it has been held as under:

"In my opinion the impugned order is wholly arbitrary as it has been passed solely on the dictates of a politician (as the order expressly states) and not on any administrative exigency. It is settled law that transfer orders have to be passed on administrative grounds and not on the dictates of a politician vide Pawan Kumar Srivastava vs. U.P. State Electricity Board, 1995 (1) UPLBEC 414.

* * * * * * * * * * *

The above decisions made it clear that transfer orders can be set aside on three grounds.

(1) Violation of a statutory rule or

(2) Mala fides, or

(3) Infraction of any professed norm or principle governing transfer.

* * * *

The meaning of mala fides in relation to a transfer order has been explained by the Supreme Court in B Varaha Rao vs. State of Karnataka 1986 (4) SCC 131 in the following words:

This power)of transfer) must be exercised honestly bone fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot but he held as mala fide. A transfer is mala fide when it is not made for the professed purpose such as in the normal course or in the public and administrative interest or in the exigencies of service. It is a basic principle of the rule of law and good administration that even administrative actions should be just and fair.

* * * *

In my opinion, the impugned, order is also illegal because it is in breach of the basic norm or principle governing transfers that such transfers should be on administrative grounds, and not at the behest of politicians. In my opinion a transfer order passed in breach of the settled norms of administration is arbitrary and hence violative of article 16 of the Constitution."

On 4.7.2003 Hon'ble Mr. Justice Irshad Hussain was pleased to pass the following order:

"Heard Sri Manoj Tiwari learned counsel for the petitioner. Learned Standing Counsel prays for and is granted four weeks time to file counsel affidavit. List thereafter.

Meanwhile the representation of the petitioner shall be disposed of by the respondents by a speaking order within a period of one month from the date of production of certified copy of this order."

The learned counsel for the petitioner has urged that despite of the order passed by the court, representation have not decided the representation of the petitioner. The petitioner is on leave for the last

four months and he is not getting his pay. He is a class III employee and as such he is also financially being harassed.

It is really surprising that despite of the order dated 4.7.2003 passed by this Court, the representation of the petitioner has not been decided as yet by the respondents.

In the light of aforesaid facts and circumstances, the respondents are directed to decide the representation of the petitioner by a speaking order, within one month after receiving certified copy of this order.

The petitioner apprehends that his salary shall not be paid. Suffice it to say that the apprehension of the petitioner is wholly misconceived. The authorities concerned shall pay the salary due to the petitioner regularly, in accordance with rules applicable in this regard.

With the aforesaid observations the writ petition is disposed of.

23.10.2003 **(Rajesh Tandon, J.)**
*Dhyani